

Internal Revenue Service

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Department of the Treasury

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Date:

November 20, 2009

Parent =

Acquiring =

Sub =

Target =

Target =
Sub

Industry =

Regional =

State =

Country X =

Country Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year 1 =

Year 2 =

a =

b =

c =

d =

e

Dear :

This letter responds to your letter dated August 17, 2009, in which you requested rulings regarding certain Federal income tax consequences of a series of completed transactions. The information submitted in that letter and later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury

statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

Parent is a privately held State corporation and the common parent of an affiliated group of corporations that files a consolidated Federal income tax return on a calendar-year basis (the "Group").

Parent owns all the stock of Acquiring, a State corporation, and Acquiring owns all the stock of Sub, a Country X entity required to be treated as a corporation for Federal income tax purposes under Treas. Reg. § 301.7701-2(b)(8)(i). Sub is a controlled foreign corporation under section 957(a) of the Internal Revenue Code (a "CFC") and maintains its financial information on a calendar-year basis. Before the Conversion described below, Acquiring also owned all the stock of Target, a State corporation. Acquiring is a member of the Group, as was Target before the Conversion.

Target was formed by Acquiring to hold an a-percent interest in Target Sub, a Country Y entity treated as a corporation for U.S. Federal income tax purposes. The remaining interests in Target Sub were owned by persons unrelated to Acquiring (the "Unrelated Members"). In connection with the formation of Target Sub, Target committed to make cash loans to Target Sub from time to time totaling b dollars. In partial satisfaction of this commitment, Target loaned Target Sub c dollars in exchange for a promissory note early in Year 1 (the "Year 1 Note"). Because Target held no material assets other than its interest in Target Sub at the time, the funds loaned by Target to Target Sub were first loaned to Target by Acquiring in exchange for a promissory note (the "Target Note"). Early in Year 2, in further satisfaction of Target's remaining commitment discussed above, Target loaned Target Sub another d dollars in exchange for a second promissory note (the "Year 2 Note" and together with the Year 1 Note, the "Target Sub Notes"). As before, the d dollars loaned by Target to Target Sub had first been loaned by Acquiring to Target in exchange for a promissory note (together with the Target Note, the "Target Notes"). Other than its interest in Target Sub and the Target Sub Notes, Target held no material assets at any time before the Conversion.

The Transactions

For what are represented to be valid business reasons, Parent caused the following series of transactions to occur (the "Transactions"):

(i) On Date 1, Target and the Unrelated Members contributed all of their Target Sub debt (except for the Year 2 Note, which Target retained,) to Target Sub in exchange for additional shares of Target Sub stock.

(ii) Following step (i) above, Acquiring contributed the Target Notes to the capital of Target on Date 2 (the “Target Notes Contribution”). The Target Notes Contribution occurred in contemplation of a transfer of the Target Sub ownership interests to Sub.

(iii) Pursuant to a Share Purchase Agreement effective on Date 3, Acquiring sold all the stock of Target to Sub (the “Sale”) for approximately dollars in cash (the “Purchase Cash”).

The Sale was designed to provide Sub with certain benefits that would result from owning an interest in Target Sub. Originally, Target was to sell its interest in Target Sub directly to Sub for the Purchase Cash, but due to concerns that such a sale would violate Parent’s third party debt covenants, it was decided that Acquiring should sell its stock in Target (a holding company for the Target Sub interest) to Sub. Parent had been advised by legal counsel that such a sale would not violate any of its debt covenants. After the Sale was completed, however, Parent was informed by its tax advisors that the Sale would result in unintended adverse Federal income tax consequences to the Group.

To avoid these unintended consequences, Acquiring and Sub entered into an agreement on Date 4 to rescind the Sale (the “Rescission Agreement” and the “Rescission”). Under the Rescission Agreement, the parties agreed that the Share Purchase Agreement that had effected the Sale would be null and void from its inception, and neither Acquiring nor Sub would have any enforceable rights or obligations under the Share Purchase Agreement. In addition, the existing certificates representing shares of Target stock issued in Acquiring’s name would continue to be valid, and Acquiring would have no obligation to deliver Target stock certificates to Sub. The parties also agreed to treat the Rescission as a rescission of the Share Purchase Agreement and not as an acquisition of Target stock by Sub followed by a re-acquisition of the Target stock by Acquiring, or as any other form of transaction.

The parties also stated in the recitals of the Rescission Agreement that:

The purpose of the rescission is, and the effect of the rescission will be, to restore in all material respects the legal and financial arrangements among the parties that would have existed had the Share Purchase Agreement never been executed and, in particular, this Rescission Agreement is intended to restore the legal and financial arrangements between Acquiring and Sub that would have existed had Acquiring not received the Purchase Cash, and to cause the legal and financial arrangements between Acquiring and Sub to be identical in all material respects, from the date immediately before the Share Purchase Agreement was executed, to such arrangements that would have existed had the Share Purchase Agreement never been executed.

Neither Acquiring, Sub, Target, Parent, nor any other person or entity under their respective control, will take any material position or make any material change inconsistent with the position that would have existed had the Share Purchase Agreement never been executed.

The Rescission was completed on Date 5, at which time Acquiring repaid the Purchase Cash to Sub.

Following the Rescission, and to achieve the business benefits for Sub that the Sale would have produced, Parent caused the following steps to occur:

- (i) Effective Date 6, Target converted under State law to a limited liability company ("Target LLC" and the "Conversion").
- (ii) Pursuant to an agreement effective on Date 7, Acquiring sold its interest in Target LLC (and thus, the interest in Target Sub and the Year 2 Note held by Target LLC) to Sub (the "Transfer") for approximately e dollars (the "Transfer Cash"). The Conversion was intended to qualify as a reorganization under section 368(a).

Representations

Regarding the Rescission, Parent represents that:

- (a) The Sale was a transaction to which section 304(a)(1) would have applied.
- (b) The Sale occurred during the taxable year of the Group ending Date 8 (the "Year 2 Tax Year"), and the Rescission was effective during the Year 2 Tax Year.
- (c) The intent and effect of the Rescission Agreement was, and is, to restore in all material respects the legal and financial arrangements between Acquiring, Target, and Sub that would have existed had the Sale not occurred.

(d) Parent, Acquiring, and Sub have examined their activities, and the activities of all other entities controlled directly or indirectly by Parent between the Sale and the Rescission (the “Interim Period”) and have (i) determined that no activity of any such entity has occurred that is materially inconsistent with the Rescission, and (ii) agreed that no activity of any such entity will occur that is materially inconsistent with the Rescission.

(e) During the Interim Period, the Sale had no legal or material economic consequences to any of Parent, Acquiring, Sub, or any other corporation controlled directly or indirectly by Parent during the Interim Period.

(f) The Rescission placed Parent, Acquiring, and Sub in the *status quo ante* immediately before the Sale.

(g) The Rescission did not involve any party that was not involved in the Sale.

(h) Acquiring and Sub executed the Rescission Agreement and implemented the Rescission in accordance with the terms of the executed Rescission Agreement.

(i) The parties will treat the Rescission as a rescission of the Sale and not as an acquisition of Target stock by Sub followed by a reacquisition of the stock by Acquiring, or as any type of transaction other than a rescission of the Sale.

(j) Provided the Rescission is effective to disregard the Sale for Federal income tax purposes, Parent and its subsidiaries will file their Federal income tax and information returns for the Year 2 Tax Year as if Acquiring had not sold the stock of Target to Sub in the Sale. In particular, the return of the Group for the Year 2 Tax Year will reflect Target as being a member of the Group for the period of the Year 2 Tax Year preceding the Conversion, and all material items of income, deduction, gain, and loss of each member of the Group will be reflected on the Group’s consolidated Federal income tax return as if the Sale had not occurred.

Regarding the Conversion, Parent represents that:

(k) Each step of the Conversion and the Transfer was effected under a single, overall plan.

(l) No election was filed or will be filed for Target or Target LLC during the 60-month period ending on the effective date of the Conversion or thereafter that would change its initial or default classification.

(m) Target and Sub participated in the Conversion and the Transfer for *bona fide* business reasons. Parent’s management believes that the Conversion and the Transfer will allow Sub to fully realize the growth potential of the Country X business by (i) providing Country X Industry customers with the ability to commercialize their

products across Regional markets; (ii) providing Country X Industry customers with the ability to free up their own resources to focus on developing strategic assets; and (iii) allowing Sub to learn from and understand the Target Sub business model and replicate this model in Country X for the future growth of its business.

(n) Acquiring acquired at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately before the Conversion. For purposes of this representation, amounts paid by Target to dissenters, amounts used by Target to pay its reorganization expenses, amounts paid by Target to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately before the transfer will be included as assets of Target held immediately before the transaction.

(o) The Transfer Cash received by Acquiring was approximately equal to the fair market value of the Target LLC interest surrendered therefor.

(p) The fair market value of the property transferred by Target to Acquiring in the Conversion exceeded the amount of liabilities of Target immediately before the exchange (including any liabilities cancelled, extinguished or assumed in the exchange); and the fair market value of the assets of Acquiring equaled or exceeded the amount of its liabilities immediately after the Conversion.

(q) The liabilities if any, assumed (within the meaning of section 357(d)) in the Conversion by Acquiring were incurred in the ordinary course of business and are associated with the property of Target.

(r) Except for the Transfer, Acquiring has no plan or intention to cause Target LLC to sell or otherwise dispose of any of the assets held by Target before the Conversion, except for (i) dispositions made in the ordinary course of business, or (ii) transfers of assets to one or more corporations “controlled” by Acquiring (within the meaning of section 368(c)) after the Conversion.

(s) Following the Conversion and Transfer, Sub will continue the historical business of Target or use a significant portion of the historical business assets of Target in a business within the meaning of Treas. Reg. § 1.368-1(d).

(t) Sub is a member of Acquiring’s “qualified group” within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii).

(u) Target, Acquiring, and Sub each paid their respective expenses, if any, incurred in connection with the Conversion.

(v) No indebtedness existed between Target and Acquiring before the Conversion that was issued, acquired, or settled at a discount.

(w) No two parties to the Conversion were investment companies within the meaning of section 368(a)(2)(F)(iii) and (iv).

(x) Neither Target nor Acquiring was, or is, under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

(y) Items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations as a result of the Conversion (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published by T.D. 8597).

(z) Parent will remain as the common parent of the Group, and the Group will not terminate.

(aa) All of the rights and obligations under the Target Notes were extinguished for Federal income tax purposes in the Conversion.

(bb) The adjusted issue price of the Target Notes was equal to Acquiring's basis in each of the Target Notes.

(cc) Target's corresponding item and Acquiring's intercompany item (after taking into account the special rules of Treas. Reg. § 1.1502-13(g)(4)(i)(C)) with respect to the Target Notes offset in amount.

(dd) Neither Target nor Acquiring has a special status within the meaning of Treas. Reg. § 1.1502-13(c)(5) or attributes subject to a limitation under the separate return limitation year rules (e.g., Treas. Reg. § 1.1502-15, 1.1502-21(c), or 1.1502-22(c)).

(ee) During the entire period of time that Target held stock in Target Sub, Target Sub has never been a CFC with respect to which Target was a U.S. shareholder.

(ff) Neither Target Sub, nor any of its predecessors, has ever been a passive foreign investment company ("PFIC") (within the meaning of section 1297(a)).

(gg) Prior to the Conversion, Target did not carry on activities that would have risen to the level of a qualified business unit and which, pursuant to Treas. Reg. § 1.985-1, would have been treated as having a functional currency other than the U.S. dollar.

(hh) Prior to the Conversion, Target did not carry on activities directly, or indirectly, that would have been treated as a separate unit under section 1503(d). Thus, Target has never incurred losses that were subject to an agreement, election, or certification filed pursuant to section 1503(d) and the regulations thereunder.

Rulings

Based solely on the information submitted and the representations made herein, we rule as follows:

1. For Federal income tax purposes, (i) the Sale is disregarded; (ii) the shares of Target stock that Acquiring held on Date 3 are treated as having been owned by Acquiring throughout the Interim Period; and (iii) Target is treated as having remained a wholly owned subsidiary of Acquiring and a member of the Group at all times during the Year 2 Tax Year until consummation of the Conversion on Date 7 (Revenue Ruling 80-58, 1980-1 C.B. 181).

2. The Conversion is a reorganization within the meaning of section 368(a)(1)(C). Target and Acquiring are each “a party to a reorganization” within the meaning of section 368(b).

3. The Transfer did not prevent the Conversion from qualifying as a reorganization under section 368(a)(1)(C) (section 368(a)(2)(C), Treas. Reg. § 1.368-2(k)).

4. No gain or loss was recognized by Target on the transfer of its properties to Acquiring in exchange for deemed issued shares of Acquiring voting stock and the assumption by Acquiring of related liabilities (section 361(a) and (b), section 357(a), Treas. Reg. § 1.1502-13(g)(3)(i)(B)(5), and Rev. Rul. 72-464, 1972-2 C.B. 214).

5. No gain or loss was recognized by Acquiring on the receipt of Target’s assets from Target in exchange for deemed issued shares of Acquiring stock (section 1032(a)).

6. The adjusted basis of each Target asset in the hands of Acquiring equals the adjusted basis of that asset in the hands of Target immediately before the exchange (section 362(b)).

7. The holding period of Acquiring in each asset received from Target includes the holding period of that asset in the hands of Target immediately before the exchange (section 1223(2)).

8. Pursuant to section 381(a) and Treas. Reg. § 1.381(a)-1, Acquiring succeeded to and will take into account the items described in section 381(c) on the date of the Conversion. These items will be taken into account by Acquiring subject to the provisions and limitations specified in sections 381, 382, 383, 384, 904, 1502, and the regulations thereunder (Treas. Reg. § 1.381(b)-1(b)(1); Revenue Ruling 70-27, 1970-1 C.B. 83; Revenue Ruling 80-144, 1980-1 C.B. 80).

9. Acquiring will recognize gain or loss on the Transfer equal to the amount realized less Acquiring's basis in the Target Sub stock and the Year 2 Note (sections 61 and 1001).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including under the international provisions of the Code.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely,

Lewis K Brickates
Branch Chief, Branch 4
Associate Chief Counsel (Corporate)

cc: